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No. 88-1939

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

NEW ENGLAND NEWSPAPERS, INC.
d/b/a/ THE PAWTUCKET EVENING TIMES,
Petitioner,
v.
PAUL J. M. HEALEY, M.D.,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Rhode Island

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REPLY BRIEF OF PETITIONER NEW ENGLAND NEWSPAPERS, INC.

MICHAEL F. HORAN
393 Armistice Boulevard
Pawtucket, Rhode Island 02861
(401) 725-7368

MICHAEL D. SULLIVAN
Counsel of Record

LEE LEVINE
JAMES E. GROSSBERG
ELIZABETH C. KOCH
ROSS, DIXON & MASBACK
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 662-2000
Counsel for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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Petitioner New England Newspapers, Inc. respectfully submits this Reply Brief to Respondent Paul J. M. Healey, M.D.'s ("Healey") Brief in Opposition ("Brief in Opposition") to the Petition for a Writ of Certiorari filed herein.

In his Brief in Opposition, Healey asserts that, at the trial of this case, "the evidence was . . . that Mr. [Jerry] Lampinski was removed from the scene, 5 to 10 minutes after he collapsed by means of a rescue vehicle. (R. 250, 251)." Brief in Opposition at 7. The record evidence that Healey relies upon, however, states only that "the emergency vehicle *arrived* at the scene . . . 5 to 10 minutes" after Lampinski's collapse. R. 251 (emphasis added).[1]

[1] References to the trial transcript are denoted herein as "R." All testimony from the trial transcript referenced in this Reply Brief is reprinted, for the Court's convenience, in the Appendix hereto.

In fact, the only evidence in the record that speaks to when the ambulance departed, as opposed to when it arrived, is as follows: (1) Raymond Bergeron testified that the ambulance left for the hospital just as he was returning to the entrance of MacColl Field from the YMCA Physical Fitness Center fifteen to thirty minutes *after* he had informed both YMCA official Esselton McNulty and security guard James W. Bethel of Lampinski's collapse, R. 483-84, 490; and (2) Bethel testified that Bergeron remained outside the Physical Fitness Center for approximately forty-five minutes before he returned to the MacColl Field entrance, R. 546.

The undisputed record evidence, therefore, establishes that the ambulance did not leave MacColl Field for the hospital until at least fifteen, and as long as forty-five minutes after Bergeron relayed the news of Lampinski's collapse in separate conversations with Bethel and McNulty. Accordingly, Healey's assertion that Lampinski "was removed from the scene, 5 to 10 minutes after he collapsed" is without support in the record.

Respectfully submitted,

MICHAEL F. HORAN
393 Armistice Boulevard
Pawtucket, Rhode Island 02861
(401) 725-7368

MICHAEL D. SULLIVAN
Counsel of Record

LEE LEVINE
JAMES E. GROSSBERG
ELIZABETH C. KOCH
ROSS, DIXON & MASBACK
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 662-2000
Counsel for Petitioner

APPENDIX

EXCERPTS FROM TRANSCRIPT OF RECORD

[ANSWERS TO INTERROGATORIES ENTERED INTO EVIDENCE]

* * * *

[249] MR. KELLY: If it is pleases, the interrogatories are questions put by Paul J. Healey to the defendant, and answered by the New England Newspapers, d/b/a the Evening Times, by Robert C. Campbell.

* * * *

MR. KELLY: "After about fifteen minutes." "If any employee, representative or agent of the defendant corporation had any conversations with Mr. Jerry [250] Lampinski on June 23, 1980, please state the name of the employee, agent or representative having the conversation. Further describe the time, location and substance of the conversation. Answer. Ed Gaulin spoke to Mr. Lampinski on June 23, 1980, at MacColl Field at approximately 6:00 PM concerning the fact that Mr. Lampinski was not allowed admittance to the YMCA Board meeting being held there. Question. If anyone from the defendant corporation saw Mr. Lampinski collapse on June 23, 1980, state the name of the person, the time and location where Mr. Lampinski collapsed and precisely what happened at the time of his collapse. Answer. Ed Gaulin—at approximately 6:15 PM while Mr. Lampinski was picketing at the entrance to MacColl Field. Question 11. If anyone saw Mr. Lampinski collapse, please state: Whether anyone treated him at MacColl Field and the name of this individual, if in fact it is known. (b) Who called the emergency vehicle that arrived at the scene. (c) What time the call was made. (d) How much time elapsed between the time Mr. Lampinski collapsed and the time the emergency vehicle arrived at the scene. Answer. Ed Gaulin and two other unidentified

males administered CPR to Mr. Lampinski." To (b), the question on who called the rescue squad,—

[251] MR. HORAN: Objection.

MR. KELLY: The answer is—

MR. HORAN: Your Honor.

THE COURT: One second.

MR. HORAN: I believe, I don't think you have to edit the answer. I believe the rules provide for answering, the answer as presented.

THE COURT: Well, I don't disagree with that. However, I don't want it a wasted exercise. I want the jury to understand what the question is and what the answer is. When the question is in several parts I will let you do the part and then the answer for that part. So let's go back to the beginning, and do it in parts.

MR. KELLY: Thank you, Judge. As to the parts, part (b), "Who called the emergency vehicle that ultimately arrived at the scene? Answer, Carol Peckenham. (c) What time the call was made. Answer, Between 6:15 PM and 6:30 PM. (d) How much time elapsed between the time Mr. Lampinski collapsed and the time the emergency vehicle arrived at the scene? Answer. 5 to 10 minutes. (e) The names of any persons in the vicinity who saw Mr. Lampinski collapse. Answer. Ed Gaulin, Carol Peckenham, Raymond Bergeron, and other undisclosed picketers. . . .

* * * *

[TESTIMONY OF RAYMOND BERGERON]

* * * *

[483] A. I went back a while later. You're stating that I spoke to the policeman, Mr. McNulty, and then went back, which is not true.

Q. It's not true?

A. No, it's not true, and my deposition states I stayed there in my van for awhile, fifteen to twenty minutes

or so, maybe even a half hour, before I went back to the front entrance.

* * *

[484] Q. . . . . But notwithstanding the time frame when you returned to the front of the property, correct, when you returned to the front of the property Mr. Lampinski had already left the area?

A. Yes, he had.

Q. He had already been transported away in the ambulance?

A. Just as I was arriving, yes.

* * * *

[490] Q. Now, after your conversation with Mr. McNulty, what happpened then?

A. Mr. McNulty went back into the meeting.

Q. He said nothing further to you?

A. Not that I recall.

Q. Did you stay there?

A. Yes, I did.

Q. How long did you stay there?

A. Probably a total of about twenty minutes to maybe a half hour.

* * * *

[TESTIMONY OF JAMES WILLIAM BETHEL]

* * * *

[546] Q. Do you recall how long Mr. Bergeron stayed there in his van?

A. Well, I think he was up there for a total of time that, it probably was three quarters of an hour.

Q. How long?

A. About three quarters of an hour.

* * * *